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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,522	10/15/2003	Edward J. Seppi	VM7036492001	5245

55499 7590 03/27/2009
Vista IP Law Group (Varian)
1885 Lundy Ave, Suite 108
San Jose, CA 95131

EXAMINER

KISH, JAMES M

ART UNIT	PAPER NUMBER
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3737

MAIL DATE	DELIVERY MODE
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03/27/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/687,522	Applicant(s) SEPPI ET AL.	
	Examiner JAMES KISH	Art Unit 3737	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/BRIAN CASLER/
 Supervisory Patent Examiner, Art Unit 3737

Continuation of 11. does NOT place the application in condition for allowance because: The Applicant argues on page 11 with regard to claim 29 that Ogawa does not anticipate the claim. The Examiner respectfully disagrees. Firstly, the claim is "a computer product having a set of stored instructions, the execution of which causes a process to be performed." The process is, very generally, to generate a first set of image data, a second set of image data and to create a volumetric composite image. The fact that the bodily region includes a contrast agent is not a process, nor is there a step that the provides that the computer product is causing the bodily region to include a contrast agent, via injection or administration. The set of stored instructions will cause the computer to execute the process regardless of whether the bodily region includes the contrast agent. Secondly, Ogawa is entirely capable of being performed on a patient that has contrast agent flowing through a bodily portion and the computer processes of Ogawa would operate in the manner described and explained in the claims and in the Office Action with or without a contrast agent being present. On page 12 the Applicant argues the motivation for combining Ogawa with Hughes. The Examiner believes these two references are capable of being combined. These references are not merely inter-related based on the fact that they both perform imaging. Both references image based on at least two different energy levels, as is similar to the claimed subject matter. Both perform image subtraction of the image data. Ogawa teaches the three-dimensional aspect while Hughes teaches the use of a contrast agent. Hughes teaches angiography, the radiologic visualization of blood vessels, containing contrast media, has become a powerful diagnostic tool that provides information not otherwise available. Because blood vessels absorb x-rays in a fashion similar to the surrounding soft tissues, they cannot be seen in routine examinations. Hence, iodine-containing materials are injected directly into the arteries during the X-ray examination to provide the needed contrast. Ogawa teaches that the energy subtraction processes and the 3D image formed from the energy subtraction-processed projection image signals can aid in diagnosis. "Therefore, a pattern of a diseased part, which is hidden behind a pattern of a specific structure, can be detected appropriately. As a result, diagnosis of an illness can be made efficiently and accurately. Therefore, the combination of Hughes's use of contrast agent imaging with the use of 3D imaging as taught by Ogawa (which share many similarities already, such as multi-energy imaging and subtraction techniques) would at least allow a doctor to view the vessels of interest (or the entire circulatory tree) while also viewing the surrounding soft tissue while attempting to diagnosis a disease or illness of the vessels. The 3D nature of the resulting image would only provide a more efficient and accurate diagnosis, as stated by Ogawa. On the top of page 13, the Applicant requests that the Examiner point out where Hughes discloses creation of a volumetric image. The Examiner finds this request moot because this is essentially a request to argue Hughes as a Section 102 reference, which is not part of the prosecution history on the current claims. On the bottom of page 13 and the top of page 14 the Applicant argues the motivation and combination of Ogawa and Acharya. The Examiner believes these two references are capable of being combined. Ogawa may not explicitly state that there is a need to characterize plaque, however, Ogawa teaches the creation of images of good contrast of soft tissue. Therefore, this would aid in the viewing and analyzing of the soft tissue portion of non-calcified plaque (which was the motivation). In the same way that the Applicant argues that Ogawa and Hughes are only in the same field of imaging, the Examiner notes that Acharya also teaches imaging processes in which at least two energy levels are utilized and a subtraction process creates a third image. To state that all three of these references are only related as being in the field of imaging is an erroneous statement. For at least the reasons above, the rejection as stated in the Office Action dated January 8, 2009 still stands even in view of the arguments submitted on March 6, 2009.